

SOUTH AFRICA / JUDGMENT

S v Phalafala (44/10) [2011] ZANWHC 33 (10 March 2011)

[2011] ZANWHC 33

COURT

North West High Court, Mafikeng

BEFORE

A.M. Kgoele, R.D. Hendricks

CASE / FILE NUMBER

44/10

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

NORTH

WEST HIGH COURT

HIGH

COURT REF: 44/10

In

the matter between:

THE
STATE
and
SAMUEL
PHALAFALA

REVIEW

JUDGMENT

KGOELE J.

- [1] The accused in this matter was convicted of housebreaking with intent to steal and theft. He was sentenced to three (3) years direct imprisonment.
- [2] When this matter came before me on review, I raised the following issues regarding the sentence that was meted out by the presiding officer:-
1. According to the prosecutor the value of the goods stolen is

R29 000 00. However, the charge sheet does not at all reflect the value of the goods stolen. The accused was never confronted with the value of the goods stolen during the 112 proceedings nor is there any indication that he admitted it. There is basically nothing in the record of the proceedings that indicates how the R29 000-00 was computed. It seems as if the magistrate took the value of the goods into consideration when sentencing the accused to a custodial sentence of (3) three years. If so, the presiding officer is requested to explain the reasons why the value of the goods stolen influenced him so much in sentencing the accused when there was no proof of it on record.

2. The following principles are trite and have been quoted in many cases countless times:-

* Direct imprisonment should not be imposed if it can be avoided

* A first offender should not be imprisoned if imprisonment “can legitimately” be avoided.

2.1 Did the presiding officer not overemphasize the seriousness of the offence over the personal circumstances of the accused by imposing an effective term of imprisonment of three (3) years without an option of a fine or any form of suspension?

[3] The presiding officer’s response was as follows:-

It has been noted that the record of the proceedings does not reflect the R29 000-00 value indicated by the prosecutor. The value of the goods did not influence me in coming to the sentence, that is why initially I requested for the pre-sentencing report as per Exhibit “A” and the accused did not qualify for correctional supervision sentence.

The principles have been noted and would be applied.

I do not think I have overemphasized the seriousness of the offence over the personal circumstances of the accused by imposing sentence, and a sentence with an option of a fine was according to me

not an appropriate sentence.

[4] The accused pleaded guilty to the charge he was facing and was correctly convicted by the presiding officer. The articles that he stole were reflected as follows on the charge sheet:- TV, Subhoover music system, cheese and meat. The articles were recovered. No previous convictions were proven against the accused. He is twenty (20) years of age. He said he works as a taxi driver and earns a living. A pre-sentencing report was handed in court but the officer that compiled it did not recommend correctional supervision.

[5] The value of the articles stolen was not reflected on the charge sheet. The presiding officer did not during the proceedings in terms of section 112 ask the accused about the value of the articles stolen. The value of the articles stolen came to the picture at the time the prosecutor addressed the court on sentence.

- [6] At the time the presiding officer delivered his sentence judgment, he repeatedly made the following remarks:-

Page 6 line 7-11

“As accord by the state I also wonder why these cases of this nature, more particularly the amount of R29 000-00 involved coming to the District Court? This matter should have been referred to the Regional Court so that you get proper sentence.”

Page 7 line 4-7

“As I already said, I also wonder as to why this case was not taken to the Regional Court originally? Be as it may you have been convicted of a serious offence.”

- [7] It seems as if the presiding officer placed much emphasis on the value of the articles stolen which was stated as R29 000-00 by the prosecutor when sentencing the accused despite the fact that it was not proven. In his reply to my query he only mention the fact that he is of the view that a sentence with an option of a fine is not appropriate without giving reasons. The presiding officer also did not provide any reasons why suspension of a sentence either partly or wholly could not be considered.
- [8] It is trite law that in addition to the theories of punishment which are retributive, preventative, deterrence and reformatory, the court has also to consider the well known principles as laid down in the case of *S v Zinn* 1969 (2) SA 537 (A) namely:

the crime

the offender and

the interest of the community

- [9] What is of utmost importance is for the court not only to take these factors into consideration, but to weigh and evenly balance all of them in determining the appropriate sentence it seeks to impose. None of these factors should be overly and unduly emphasized above the other by the court. It is also accepted that the sentence which is to be imposed should be blended with mercy because mercy is an element of justice itself. See *S v Rabie* 1975 (4) SA 855 (A).
- [10] I am of the view that the personal circumstances of the accused before court, the fact that he pleaded guilty and further that the goods were recovered constitute mitigatory factors that counts strongly in his favour. One has to bear in mind that too harsh a punishment serves neither the interest of justice nor those of a society. Neither does the one that is too lenient. Courts should therefore strive for a proper balance that has regard to all the objects of sentencing.
- [11] In the same case of *Zinn* quoted above, the following was also held at page 540 f-g:

“It is also a misdirection for the court to overemphasise the crime and underemphasise the personal circumstances of the offender or vice versa”.

- [12] In *S v Scheepens* 1977(2) SA 155(A) at p159 A-D Viljoen J.A expressed a personal opinion that imprisonment is justified only if the offender needs to be removed from society in order to protect society and if the purposes of punishment cannot be achieved through any other punishment. In addition, the court also declared that if the same objects of punishment can be achieved through an alternative sentence, that alternative sentence should be preferred.
- [13] Without overlooking the fact that the offence committed is serious and prevalent in our country, I am of the view that the seriousness of the offence and the prevalence thereof do not per se justify the presiding officer to overlook the personal circumstances of the accused.
- [14] I therefore come to the conclusion that the presiding officer unduly overemphasised the seriousness of the offence and the interest of the community above the personal circumstance of the accused. The circumstances of this matter informs me that a proper balance of the object of sentencing in terms of punishment can be achieved in this matter through other alternative sentencing options than direct imprisonment

[15] Consequently the following order is made:-

The conviction of the accused is confirmed;

The sentence imposed by the court a quo is set aside and substituted by the following:-

Five thousand rand (R5000-00) or three (3) years imprisonment, half of which is suspended for three (3) years on condition the accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension.

A.M. KGOELE

JUDGE OF THE HIGH COURT

I agree

R.D. HENDRICKS

DATED: 10/03/2011

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2011/33.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-phalafala-unknown-topic-anwhc-2011>

Prepared on 11 October 2026 · Esheria